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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,416	07/27/2001	Yukio Yamori	SAEGU85.001A	1599

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EXAMINER

ZUCKER, PAUL A

ART UNIT PAPER NUMBER

1621

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/890,416	Applicant(s) YAMORI ET AL.	
	Examiner Paul A. Zucker	Art Unit 1621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 19-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 20-25 is/are allowed.
- 6) ☒ Claim(s) 19 and 26-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/31/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Withdrawal of Finality

1. In view of the new rejection set forth below the finality of the previous Office Action mailed 27 December 2005 is hereby withdrawn.

Current Status

2. This action is responsive to Applicants' amendment of 24 March 2006.
3. Receipt and entry of Applicants' amendment is acknowledged.
4. Applicant's cancellation of claims 30-36 is acknowledged.
5. Claims 11 and 19-29 are pending.
6. The rejections under 35 USC § 112, first paragraph, set forth in paragraph 8 of the previous Office Action mailed 27 December 2005 is withdrawn as moot in view of Applicants' cancellation of claims 30-36.
7. The indicated allowability of claims 11 and 19-29 is withdrawn in view of the new rejection of claims 19 and 26-29 over Toppo (US 6,048,903 04-2000).

New Rejections

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 19 and 26 –29 are rejected under 35 U.S.C. 102(e) as being anticipated by Toppo (US 6,048,903 04-2000). Toppo discloses (Abstract) the use of resveratrol for the treatment of elevated levels of low density lipoprotein (LDL) cholesterol as well as increasing levels of high density lipoprotein (HDL), in doses of 50 to 1,000 mg daily amounts (which the Examiner considers to overlap the dosages instantly claimed considering average weight distributions). Toppo discloses (Column 1, lines 25-31) that this treatment will reduce the risk of the clogging of arteries. The prevention of cerebral apoplexy (stroke) is therefore an inherent result of the application of Toppo's method. Toppo teaches (Column 1, lines 32-38) the cholesterol lowering activity of wine, a food product derived from grapes (the Vitaceae family). Elevated cholesterol levels are a characteristic of human individuals of advanced age and therefore its use in postmenopausal women is also inherently taught since there is no distinction made by Toppo between the sexes or any indication that equivalent effects are not observed in both male and female. Toppo therefore anticipates claims 19 and 26 –29.

Conclusion



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9. Claims 11 and 19-29 are pending. Claims 19 and 26-29 are rejected. Claim 11 and 20-25 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Zucker whose telephone number is 571-272-0650. The examiner can normally be reached on Monday-Friday 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


PAUL A. ZUCKER, PH.D.
PRIMARY EXAMINER
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